EUGEN GEORGESCU

IBLA 85-182 Decided April 28, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of simultaneous oil and gas lease drawing. W-3112.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly declare simultaneous oil and gas lease applications unacceptable and return the filing fees and first year's rentals, minus a $ 75 processing fee for each Part B application form, where the applicant failed to submit separate remittances, in payment of the filing fees and first year's rentals with each Part B application.

APPEARANCES: Eugen Georgescu, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Eugen Georgescu has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 13, 1984, dismissing his protest of the August 1984 simultaneous oil and gas lease drawing.

By notice dated October 11, 1984, BLM informed appellant that it had declared his five simultaneous oil and gas lease applications submitted for the August 1984 drawing unacceptable and was processing a refund in the amount of the filing fees and first year's rentals, minus a $ 75 processing fee for each of the five applications. On October 18, 1984, appellant submitted an "appeal" from the October 1984 BLM notice, stating that the Wyoming State Office had advised him prior to the time he filed his applications that, where he was filing for five parcels (CA-223, CA-224, CA-227, NM-234, and NM-647), he should "file for each parcel in the simultaneous drawing on a separate form B and pay with personal check for all the parcels in one payment." Appellant requested that a redrawing be held.

BLM treated appellant's letter as a protest. In its November 1984 decision BLM dismissed the protest because appellant had failed to submit a single remittance with each Part B application form, as required by 43 CFR

3112.2-2. BLM stated that appellant's five lease applications were "accompanied by your single personal check" in payment of all of the filing fees and first year's rentals. BLM explained that the requirement to submit a single remittance with each Part B application form reduced the likelihood that an applicant would be disqualified "for insufficient fees" with respect to all of the applications in a single filing, where he had filed a large number of applications, and, in addition, speeded the process of handling applications and identifying errors in remittances.

[1] The applicable regulation, 43 CFR 3112.2-2, provides:

> Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $ 75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both shall cause the entire filing to be deemed unacceptable.

The regulation clearly provides that "[e]ach" Part B application form shall be submitted with a separate remittance and that the failure to submit a separate remittance "shall cause the entire filing to be deemed unacceptable." Id.

Prior to the promulgation of the current version of 43 CFR 3112.2-2, that regulation merely provided: "Each filing shall be accompanied by a nonrefundable filing fee of $ 75 for each parcel. Failure to submit sufficient fees to cover all filings in a group shall cause the entire group of applications submitted with that remittance to be rejected." 43 CFR 3112.2-2 (1983). There was no requirement that an applicant submit a separate remittance with each simultaneous oil and gas lease application. Thus, an applicant could submit a group of applications with a single remittance as long as there were "sufficient fees" to cover all of the applications. Id.; see William B. Collister, 73 IBLA 64 (1983). 1/

On March 15, 1984, the Department published proposed rules in the Federal Register, in part proposing to change the language in 43 CFR 3112.2-2 (1983) to language substantially similar in import to the current language. 2/

1/ In Collister, the Board was applying 43 CFR 3112.2-2(b) (1982), which specifically provided that a "single remittance is acceptable for a group of filings." See also Charles Anderson, 76 IBLA 402 (1983).

2/ The Department specifically proposed the following language:
"Each Part B application form filing shall be accompanied by a nonrefundable filing fee of $ 75 and the first year's rental for each parcel. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels in a filing, or both, shall cause the entire filing to be deemed unacceptable."
43 CFR 3112.2-2 (49 FR 9754 (Mar. 15, 1984)).

In the preamble to the proposed rulemaking, the Department explained:

> [This change] would require that a separate check be submitted with each Part B application, rather than one check with each group of applications. The Bureau of Land Management's experience in the operation of the simultaneous oil and gas leasing program has been that a mistake of a few dollars in the remittance submitted with a large group of applications has resulted in the disqualification of inordinately large numbers of applications. While this change might inconvenience a few applicants, it should reduce the number of applications that are disqualified for each drawing, increasing the total number of acceptable applications.

49 FR 9753 (Mar. 15, 1984). The requirement to submit a separate remittance with each Part B application form was made even more explicit in the final rulemaking (49 FR 26918 (June 29, 1984)), promulgated effective July 30, 1984, which resulted in the current version of 43 CFR 3112.2-2. The preamble to that rulemaking stated that the regulatory language was specifically changed because the proposed rulemaking "seemed to indicate that a separate part B application was needed for each parcel":

> The final rulemaking has been changed to make it clear that a part B application form may cover several parcels, but that each part B application form must be accompanied by a single remittance for an amount equal to the total of the nonrefundable filing fee and the first year's rental for each parcel applied for on the part B application form.

49 FR 26920 (June 29, 1984).

In the present case, appellant submitted a single remittance with his five Part B application forms, in violation of 43 CFR 3112.2-2. Accordingly, we conclude that BLM properly held appellant's five lease applications, i.e., his "entire filing" for the August 1984 drawing, to be "unacceptable" pursuant to 43 CFR 3112.2-2. Departmental regulation 43 CFR 3112.3(b) provides: "For each Part B application form deemed unacceptable, of the fees remitted, a $ 75 processing fee shall be retained and the balance of fees, if any, shall be returned." In accordance with 43 CFR 3112.3(b), BLM has "processed" a refund to appellant in the amount of the original filing fees and first year's rentals, minus a $ 75 processing fee for each of the five lease applications. 3/

3/ The record indicates that appellant should have only filed two Part B application forms where he was filing for parcels of land which would have been posted in two BLM State offices, California and New Mexico. See 43 CFR 3112.2-1(g). In that instance, appellant would have been entitled to a refund of the filing fees and first year's rentals, minus a $ 75 processing fee with respect to only two lease applications. However, appellant filed five Part B application forms and must incur the processing fee with respect to each of those applications. Appellant claims that he was advised by an

Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984). Because appellant's applications were not "properly filed" it was proper for BLM to omit them from the original drawing, and appellant is therefore not entitled to a redrawing pursuant to 43 CFR 3112.4-2.

Appellant's argument that he was specifically advised by an unknown BLM employee to submit a single remittance with his group of applications, raises the question of estoppel. The Board has repeatedly held that reliance on erroneous information given by an employee or the Department cannot serve to excuse compliance with the applicable law, nor can it relieve someone of the consequences imposed by statute or regulation for failure to comply. See John Plutt, Jr., 53 IBLA 313 (1981) (concurring opinion). In such circumstances, the party asserting estoppel cannot establish an essential element of estoppel, i.e., ignorance or rather the absence of actual or constructive knowledge of the material facts. In the present case, the material fact is the regulatory requirement. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Accordingly, we have no basis for invocation of the principles of estoppel. Tom Hurd, 80 IBLA 107 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

fn. 3 (continued)
unknown BLM employee to file a separate form for each parcel. However, that advice, if given, is contrary to 43 CFR 3112.2-1(g), 43 CFR 3112.2-2, which provides that a remittance must be sufficient to cover "each parcel included on the Part B application form" and the Part B application form itself, which allows an applicant to apply in a single application for numerous parcels amongst those posted as available in a particular BLM State Office.